

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6803 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HARIBAHI MANIBHAI PATEL

Versus

COMPETENT AUTHORITY AND ADDL.COLLECTOR

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Appearance:

MR PM BHATT for Petitioners

MR TH SOMPURA AGP for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 11/02/97

ORAL JUDGEMENT

The petitioner no.1-Shri Haribhai Manibhai Patel had submitted the requisite form under the Urban Land (Ceiling and Regulation) Act, 1976, before the Competent Authority. He was talking of about 17 pieces of lands in his statement. Ultimately, there was a consensus on the point that, six parcels of land were required to be

considered for taking appropriate decision in respect of the excess vacant land to be held by the petitioner no.1. The following Table would go to show the Survey Number and the area comprised thereunder:

Sr.No. Survey No. Area

1.	976/1	11,635-00
2.	983	5,868-00
3.	867	2,125-00
4.	67/1	3,446-00
5.	69	4,148-00
6.	City Survey	
No.13 & 17		50-00

The Competent Authority was of the opinion that the share allegedly going to Smt. Vimlaben, who happens to be the wife of the petitioner no.1 should be clubbed in the holding of the said petitioner. Any how, after doing this exercise, the Competent Authority under his orders dated November 25, 1992, had come to the conclusion that there was no excess vacant land as understood within the meaning of the Act of 1976.

It appears that, though nothing was declared to be excess vacant land under the said orders, the petitioner no.1 had filed a belated appeal before the Urban Land Tribunal, Ahmedabad. The Competent Authority, Vadodara had also filed appeal against the very same orders. Ultimately, both these appeals which have been registered as Appeal Nos. 78/93 and 79/93 came to be decided under the common orders dated July 18, 1996. Under these orders, it appears that the land bearing Survey No. 867 admeasuring about 1375 sq.mtrs. of land was declared to be excess vacant land under the Act of 1976. The orders which are not very clear also speak of an area of about 18,744 sq.mtrs. also as the excess vacant land. This is the reason why, in my opinion, the matter requires to be remanded to the Competent Authority with appropriate directions.

It shall have to be accepted that the Tribunal was not justified in coming to the conclusion regarding the excess vacant land from Survey No. 867. The Competent Authority had accepted the case of the petitioner in respect of this land as was being presented before the said authority. The Tribunal has said that, there was no enough material to warrant a conclusion regarding the area which was built up and the area which would be available as the land appurtenant and the additional land appurtenant under the Act. This finding

rendered by the Tribunal appears to be de-hors the clear material on record. Annexure.G to the petition is the certificate given by the Sarpanch of Gotri Gram Panchayat, dated December 12, 1972, saying that the petitioner no.1 Shri Haribhai Patel had made the requisite application before the District Panchayat at Vadodara in respect of the land bearing R.S. No. 867. This certificate would further go to show that the construction was completed in the said land in December 1972. The particulars regarding the built up area would be as under, according to this certificate:

Residential house 700 sq.mtrs  
Kothi (a shed meant for keeping cattle) 200 sq.mtrs.  
6 servant quarters 300 sq.mtrs.  
Garage for parking Tractor and other agricultural implements 100 sq.mtrs.  
Godown for storing the agricultural produce 200 sq.mtrs.

This certificate, therefore, sums up by saying that there are the above said constructions in the area admeasuring 1500 sq.mtrs. The question which has not been examined by the Tribunal would be, in respect of the land appurtenant and the additional land appurtenant to the same of the constructions mentioned hereinabove. There is no dispute that the petitioners would be entitled to an area of 700 sq.mtrs. as the land appurtenant along with a further area of 500 sq.mtrs. as the additional land appurtenant. Thus, the petitioners would be entitled to the total area of 1200 sq.mtrs. also as the land appurtenant and the additional land appurtenant. Thus, the total land which requires to be deleted from the zone of consideration bearing R.S. No. 867 would be of 2700 sq.mtrs. The area of the above said parcel of land is 2125 sq.mtrs. Therefore, it appears that, nothing would remain as an excess vacant land from the said R.S. No. 867. In other words, the Competent Authority was justified in taking out this area from the zone of consideration and for granting the necessary deductions, but the Tribunal was at an error in not doing so. Therefore, I am obliged to express an opinion that, nothing would remain as the excess vacant land so far as R.S. No. 867 is concerned.

So far as the land bearing Survey No.976/1 admeasuring 11,635 sq.mtrs. and the land bearing Survey No.983 admeasuring 5868 sq.mtrs. are concerned, one has to appreciate that, two other land holders, namely, Mohanbhai Manibhai Patel and Ashokbhai Manibhai Patel,

respectively, had submitted separate forms. This was done by them in response to the notice under Section 18 of the ULC Act, 1976 which is available at Annexure.H, dated October 23, 1993. Later on, it appears that, both Mohanbhai Manibhai Patel and Ashokbhai Manibhai Patel had applied for the exemption under Section 20 of the ULC Act, 1976. There are two acknowledgments at Annexures.I and J, respectively, showing that such applications made by the said two land holders have been received by the Government in the Revenue Department.

Therefore, these two parcels of land could not have been taken into consideration as the holding of the petitioner. Needless it is to say that, when these two persons, in the capacity of the holders and in response to the notice under Section 18 of the ULC Act, 1976 have taken the necessary steps under Section 20 of the ULC Act, 1976, their cases shall have to be decided by the concerned authorities according to law and on merits.

The petition, therefore, stands recognised. Rule is made absolute to the above said extent, with no order as to costs.

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